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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

GERALD TOSTE et al.,

Plaintiffs and Appellants,

v.

THE SUPERIOR COURT OF EL DORADO
COUNTY,

Defendant and Respondent.

C058938

(Super. Ct. No. PC20070291)

After a judge and jury rejected an attempt by plaintiffs Gerald and Robin Toste (collectively, the Tostes) to oust their neighbors from easements on the Tostes' property, the Tostes sued the Superior Court of El Dorado County (Superior Court) for inverse condemnation, claiming the Superior Court had effectively "taken" or damaged their land for a public use without compensation.

The Superior Court demurred; its demurrer was sustained; the Tostes appeal. We shall affirm the judgment dismissing the Tostes' action against the Superior Court.¹

FACTUAL BACKGROUND

The easement dispute: the Smedberg lawsuit

Underlying this dispute is a disagreement between neighbors over two easements. The easements are held by members of the Smedberg and Guisti families over the land owned by the Tostes.

The dispute came to a head when members of the Smedberg family sought to build a driveway over the easements to a house they planned to construct on the property. Initially, the Tostes did not object to the building of the home or the driveway; then, Gerald Toste built a fence between the boundary of the two easements, and began piling obstructions along the easements and engaging in harassing and obstructionist behavior on the property and toward members of the Smedberg family.

¹ We rely for the factual background of the dispute underlying this action on that from our previous, unpublished opinion in *Smedberg v. Toste* (Dec. 10, 2008, C056578) (the *Smedberg* lawsuit), as it provides the context for the present lawsuit. Accordingly, we grant the request of respondent Superior Court that we take judicial notice of our opinion in case No. C056578. (Evid. Code, §§ 452 & 453.)

We also have granted the request of respondent Superior Court to augment the appellate record to include a copy of the document entitled, "Judgment: [¶] 1. On Special Verdict After Trial; [and] [¶] 2. By Court After Trial on Injunctive Relief and Directed Verdict," entered by the trial court on July 12, 2007, in the underlying action of *Smedberg v. Toste* (Super. Ct. El Dorado County, 2007, case No. PC20060340).

In July 2006, the Smedbergs filed a complaint against the Tostes to quiet title to the easements, to obtain declaratory relief, and to obtain an injunction and damages for negligence. They also sought a preliminary injunction to stop the Tostes from blocking their use of the easements and to compel them to remove a fence and other obstructions from the easements. The trial court granted the preliminary injunction.

The Tostes filed a cross-complaint against members of the Smedberg and Guisti families, alleging the Tostes adversely possessed the disputed easements.

The case went to trial in June 2007. The trial court granted the Guistis' motion for a directed verdict against the Tostes as to their claim that they adversely used (and therefore acquired a prescriptive easement in) one of the easements. Thereafter, the jury rejected the Tostes' remaining claims of adverse possession of the easements. It also found Gerald Toste liable for nuisance and awarded the Smedbergs \$65,000 in compensatory damages and \$40,000 in punitive damages.

Based on the evidence presented at trial, the court granted a permanent injunction, enjoining the Tostes "from harassing, annoying, intimidating, interfering with and obstructing the plaintiffs and the plaintiffs' invitees in their improvement, maintenance and use of the easement."

The instant action against the Superior Court

While the *Smedberg* lawsuit was pending, the Tostes filed the instant action. In the original complaint, the County of El

Dorado (the County) was the only named defendant. The Tostes alleged (among other things) that, by "approv[ing] a road or driveway from property owned by the Smedberg Trust[,], which went across [the Tostes'] property to Blair Road," the County had created a dangerous condition, which it thereafter had failed to investigate or correct. The Tostes further alleged that the County's actions had prompted them to present a government tort claim for damages, which had been rejected.

After the jury's verdict against them in the *Smedberg* lawsuit, the Tostes amended their complaint in the instant action to add a cause of action for inverse condemnation against the El Dorado County Superior Court (the Superior Court). In it, the Tostes alleged that "on or about July 13, 2006[,], and/or about May 8, 2007, Defendants Court, and each of them, took private property without just compensation, contrary to the Constitution, in that it excluded all or almost all of [the Tostes'] use of their own property in the area of a disputed easement on [the Tostes'] property consisting of about 10,000 square feet of land, without compensation and without any recognition of the valuable property and/or personal rights of [the Tostes], for use by the public including members of the Guisti family, members of the Smedberg family, utility companies, and/or others."

Further, the Tostes allege, "[D]efendants Court, and each of them, substantially impaired the access to [the Tostes'] property and reduced the ability of [the Tostes] to access their

land, their garage and/or their workshop, all to the monetary damage of [the Tostes], so as to inversely condemn [the Tostes'] property." Impairing the Tostes' access to their own land, they allege, "constitutes a taking and damaging" of their property, which "reduced the market value of [their] property in the amount of about \$200,000," plus recoverable attorney fees, appraisal fees and engineering fees.

The Superior Court's demurrer

The Superior Court responded by demurring to the first amended complaint, on the ground the Tostes did not state facts sufficient to constitute a cause of action under Code of Civil Procedure section 430.10, subdivision (e) because an individual superior court judge is absolutely immune for his rulings against them in connection with the *Smedberg* lawsuit and, by extension, the Superior Court is vicariously immune (Gov. Code, § 815.2, subd. (b) ["Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability"].)

In opposing the demurrer, the Tostes described the "facts as alleged" in the instant lawsuit underlying their claim for inverse condemnation against the Superior Court thus:

"Plaintiffs bought their house in 1999. Because strangers would drive up the [20-foot-wide] driveway on the northern side of Plaintiffs' property, Plaintiffs soon installed a locked

chain and then a locked gate across that driveway opening at Blair Road.

"The neighbors to the north had a [20-foot-wide] easement on their land running along the length of Plaintiffs' driveway (the 'northerly easement'), to the benefit of other certain neighbors in the back.

"In 2006, those certain neighbors demanded the use of the [20-foot-wide] driveway on Plaintiffs' property by way of an easement . . . ; that easement is called the 'southerly easement.'

"Plaintiffs argued they had adversely possessed that southerly easement due to the locked chain and then the locked gate for more than [five] years.

"The Court disagreed, and (along with the County) allowed those certain neighbors to build a [40-foot-wide] road[,], which meant that persons who could use the northerly easement of [20-foot] width could also now use the southerly easement of [20-foot] width.

"The Court also excluded Plaintiffs from using their own [20-foot-wide] driveway known as the southerly easement.
[¶] . . . [¶]

"Plaintiffs contend that this creates a public use of their [20-foot-wide] driveway, and that they were not given any compensation for the taking of this land for a public use. The

'public' can use their [20-foot-wide] driveway because there is no fence down the middle of the [40-foot-wide] road."

The Tostes insisted that the Superior Court's actions constituted an inverse condemnation because it took their private land for a public use without just compensation, within the prohibitions of the state and federal Constitutions.

The trial court sustained the Superior Court's demurrer, ruling that "the purported cause of action arises out of rulings of the [Superior Court]'s judge in the conduct of [the Smedberg lawsuit]"; those rulings are entitled to absolute judicial immunity; consequently, the Superior Court is likewise immune. (Gov. Code, § 815.2, subd. (b).) The cause of action against the Superior Court was dismissed.²

DISCUSSION

I. Trial Court Correctly Sustained Respondent's Demurrer

We conclude the trial court did not err in sustaining the demurrer of respondent Superior Court.

In so doing, we apply the following settled standard of review to an order sustaining a demurrer without leave to amend: "The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or

² This court dismissed the County of El Dorado as a party to this appeal after the Tostes filed their opening brief.

conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) The burden is on the Tostes to demonstrate the manner in which the complaint could be amended to state a viable cause of action. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386.)

While the Tostes identify the complained-of Superior Court actions only as having occurred "on or about July 13, 2006[,] and/or about May 8, 2007," we may properly take judicial notice of the fact that in July 2006--while the *Smedberg* lawsuit was pending--a judge of the Superior Court in the *Smedberg* lawsuit issued a preliminary injunction against the Tostes, enjoining them from blocking the Smedberg family's use of easements on the Tostes' property, and compelling the Tostes to remove a fence and other obstructions they had placed in the easements. (See fn. 1, *ante.*) In or about May 2007--one month before the *Smedberg* lawsuit went to trial--a judge of the Superior Court found Gerald Toste guilty in that action of 12 counts of

contempt for violating the preliminary injunction. (Fn. 1, ante.)

Respondent Superior Court demurred on the grounds that the conduct of its judge employees, and by extension its own conduct, is protected by the doctrine of judicial immunity. ""It is well established judges are granted immunity from civil suit in the exercise of their judicial functions. [Citations.] This rule applies even where the judge's acts are alleged to have been done maliciously and corruptly. [Citations.] The rule is based on ""a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself."" [Citation.] Judicial immunity is a principle of common law which is necessary for the welfare of the state and the peace and happiness of society. [Citations.]" Judicial immunity from a civil action for monetary damages is absolute.'" (*Regan v. Price* (2005) 131 Cal.App.4th 1491, 1495.) Immunity exists for judicial actions that relate to a function normally performed by a judge and where the parties understand they are dealing with the judge in his official capacity. (*Ibid.*; *Olney v. Sacramento County Bar Assn.* (1989) 212 Cal.App.3d 807, 811.)

The California Tort Claims Act (Gov. Code, §§ 810 et seq.) applies to all public entities and their employees, including judges and other employees of the superior courts (Gov. Code,

§§ 811.2, 811.4 & 811.9). It permits private tort actions against government entities and employees where permitted by statute, but otherwise retains the general concept of immunity for government entities. (Gov. Code, § 815.) Government Code section 815.2, subdivision (a) of the Act provides that government entities are generally liable for the acts of their employees, but subdivision (b) provides that, "[e]xcept as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability."

Having searched the allegations of the Tostes' first amended complaint and interpreted it liberally, as we must, we are nevertheless unable to find any clear allegations of nonjudicial action, that is, action by the court by and through the actions of its constituent judges that was *not* performed in connection with their adjudication of property rights among individuals: i.e., presiding over the jury trial in the *Smedberg* lawsuit, rendering of decisions on the parties' motions for preliminary relief in that action, and enforcement of its decisions and orders. On the application of judicial immunity alone, we conclude the trial court did not err in sustaining the demurrer of respondent Superior Court.

The Tostes insist on appeal that the doctrine of judicial immunity and the government tort claims statutes do not shield the Superior Court, as a governmental entity, from its duty under the state and federal Constitutions to reimburse them for

the "taking" or damaging of their private land for a public use. They insist that, "[w]hen [the] Court took their land, prohibited their use of that land, and ordered the fence removed, which allowed the public to use that land, without payment, there was an inverse condemnation by the actions of the Court."

We are unpersuaded. At the heart of an inverse condemnation action must lie a taking of, or damage to, private property for some public works undertaking or other activity by an agency with the power to condemn. (8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 1143, p. 784.) Our review of the judgment in the *Smedberg* lawsuit shows it involved no taking of or damage to the Tostes' property for a public purpose. Rather, the *Smedberg* lawsuit only affected the Tostes' property vis-à-vis the lawful holders of rights in the easements: The Smedberg family's rights in the easements were confirmed, and the Tostes were required to remove the fence and other obstructions in the easement, and were prohibited from otherwise interfering with the Smedberg family's rights to improve, maintain, and use the easements. (See fn. 1, *ante*.) To the extent the Tostes argue the judgment in the *Smedberg* lawsuit necessarily has the effect of forcing them to inadvertently allow members of the public, or strangers, access to their property, we disagree. The judgment does not take the easements on the Tostes' property to create a public road, nor does it prevent or limit the Tostes' use of their own property

by restricting their use of the easement. Indeed, nothing in the record before us suggests the Tostes could not--in concert with their neighbors--jointly operate a gate or otherwise act to limit the access of uninvited members of the general public to the easements.

There was no error in sustaining the respondent Superior Court's demurrer to the first amended complaint.

II. Leave to Amend

“[I]t is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Bragg v. Valdez* (2003) 111 Cal.App.4th 421, 428; *Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) The Tostes bear the burden of demonstrating a reasonable possibility that they may cure defects by an amendment, by showing in what manner the complaint can be amended and how that amendment will change the legal effect of the pleadings. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 375.)

The Tostes have not met this burden. They have not argued on appeal that the trial court abused its discretion by not allowing them to further amend their complaint, or that they can further amend the complaint to allege facts constituting a cause of action. Accordingly, we must conclude the court did not abuse its discretion in granting the Superior Court's demurrer

to the complaint without leave to amend. (*Hendy v. Losse*,
supra, 54 Cal.3d at pp. 742-743; *Palm Springs Tennis Club v.*
Rangel (1999) 73 Cal.App.4th 1, 7-8.)

DISPOSITION

The judgment (order of dismissal) is affirmed. Defendant
Superior Court is awarded its costs on appeal. (Cal. Rules of
Court, rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

BLEASE, Acting P. J.

NICHOLSON, J.